FILE COPY

FILED
APR 26 1928
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

October Term, 1927

No. ~~575~~ 17

GILBERT C. GREENWAY, JR., *Petitioner,*

vs.

FRANK K. BOWERS, Collector of Internal Revenue for the Second District of the State of New York,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

REPLY BRIEF FOR PETITIONER

Supreme Court of the United States

October Term, 1927

No. 575

GILBERT C. GREENWAY, JR., *Petitioner,*

vs.

FRANK K. BOWERS, Collector of Internal Revenue for the Second District of the State of New York,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

INDEX

	PAGE
Statement	1
Argument	2
CITATIONS.	
Doyle v. Mitchell Brothers Company, 247 U. S. 179	5
Eisner v. Macomber, 252 U. S. 189	2
Lynch v. Turrish, 247 U. S. 221	4

Supreme Court of the United States

October Term, 1927

No. 575

GILBERT C. GREENWAY, JR., *Petitioner,*

vs.

FRANK K. BOWERS, Collector of Internal Revenue for the Second District of the State of New York,
Respondent.

REPLY BRIEF FOR PETITIONER.

Statement.

The petitioner has not heretofore submitted a brief upon this appeal but relies upon the brief submitted by him upon the application for certiorari and upon the argument contained in the brief for the petitioner in the case of "Elizabeth C. Taft, Petitioner, v. Frank K. Bowers, Collector", which was heard and decided in the District Court and the Circuit Court of Appeals at the same time as the present case.

The facts in the present case are fully set forth in the brief submitted upon the application for a writ of certiorari.

The petitioner, however, desires to make a brief reply to the contention advanced by the Government in its brief, a copy of which has just been received.

Argument.

The gist of the Government's contention is that a gift constitutes income to the donee; and that the Government could, if it saw fit, tax the entire proceeds of a sale of the gift as income of the donee, from which it follows that it can tax as income of the donee, the difference between the cost of the gift to the donor and the proceeds of the sale of the gift by the donee.

We believe this argument ignores the fundamental fact that income is derivative and complementary. It has no existence independent of the source from which it is derived and is dependent upon capital in some form or upon labor for its very existence.

This conception of the meaning of the word "income" is clearly set forth by Mr. Justice Pitney in the leading case of *Eisner* v. *Macomber*, 252 U. S. 189, in the following language (pp. 207-208):

> "After examining dictionaries in common use (Bouvier's Law Dict.; Standard Dict.; Webster's Int. Dict.; Century Dict.), we find little to add to the succinct definition adopted in two cases arising under the Corporation Tax Act of August 5, 1909 (36 Stat. at L. 11, chap. 6), (Stratton's Independence v. Howbert, 231 U. S. 399, 415, 58 L. ed. 285, 292, 34 Sup. Ct. Rep. 136; Doyle v. Mitchell Bros. Co., 247 U. S. 179, 185, 62 L. ed. 1054, 1059, 38 Sup. Ct. Rep. 467): 'Income may be defined as the gain derived from capital, from labor, or from both combined,' provided it be understood to include profit gained through a sale or conversion of capital assets, to which it was applied in the Doyle case (pp. 183, 185).
>
> Brief as it is, it indicates the characteristic and distinguishing attribute of income, essential for a

correct solution of the present controversy. The government, although basing its argument upon the definition as quoted, placed chief emphasis upon the word 'gain', which was extended to include a variety of meanings; while the significance of the next three words was either overlooked or misconceived,—*'derived-from-capital'*; —*'the gain-derived-from-capital'*, etc. Here we have the essential matter: *not* a gain *accruing* to capital, not a *growth* or *increment* of value *in* the investment; but a gain, a profit, something of exchangeable value *proceeding from* the property, *severed from* the capital, however invested or employed, and *coming in*, being *'derived'*, that is, *received* or *drawn by* the recipient (the taxpayer) for his *separate* use, benefit and disposal; *that* is income derived from property. Nothing else answers the description.

The same fundamental conception is clearly set forth in the 16th Amendment—'incomes, *from* whatever *source derived'*,— the essential thought being expressed with a conciseness and lucidity entirely in harmony with the form and style of the constitution."

In the Standard Dictionary "income" is defined as follows:

> "The amount of money coming to a person or corporation within a specified time or regularly (when unqualified annually), whether as payment for services, interest, or profit from investment; revenue."

The same Dictionary defines "gift" as follows:

> "That which is given; something voluntarily bestowed without expectation of return; a donation; present."

The same authority gives as synonyms of "gift" the following:

> "Benefaction, boon, bribe, donation, grant, gratuity, present."

And the antonyms are given as follows:

> "Compensation, earnings, guerdon, penalty, remuneration, wages."

Webster, in his New International Dictionary of the English Language, defines "income" as

> "That gain or recurrent benefit (usually measured in money) which proceeds from labor, business or property; commercial revenue or receipts of any kind, including wages or salaries, the proceeds of agriculture or commerce, the rent of houses, or the return on investments."

In Volume 5 of the New English Standard Dictionary (Oxford Edition), "income" is defined as

> "That which comes in as the periodical produce of one's work, business, lands, or investments (considered in reference to its amount, and commonly expressed in terms of money) annual or periodical receipts accruing to a person or corporation; revenue."

If the entire proceeds of the sale of a gift constitute income to the donee, where is the capital from which the income is derived? The answer must be that the corpus of the gift is capital in the hands of the donee at the time of its receipt. But the mere conversion of such capital into money does not constitute income.

Lynch v. *Turrish*, 247 U. S. 221.

An amount sufficient to restore the capital value that existed at the commencement of the taxing period must be withdrawn from the gross proceeds in order to determine whether there has been a gain or loss, and the amount of the gain, if any.

Doyle v. *Mitchell Brothers Company*, 247 U. S. 179.

The popular conception of the meaning of "income" excludes property or money received by way of gift. The ordinary layman would not think of including, as a part of his income, money or property which he had received as a gift.

Petitioner submits that the contention of the Government that "income" and "gift" are synonomous is unsound, and that Section 202 (a) (2) of the Revenue Act of 1921 is unconstitutional in so far as it imposes upon a donee an income tax based upon the difference between the cost of the property to the donor and the value of the property at the time of the gift.

Respectfully submitted,

ROGER S. BALDWIN,
Counsel for Petitioner.